D.B. CIVIL SPECIAL APPEAL(W)NO.1504/2006

Basti Ram
Vs.
Civil Judge(Jr. Div.), Behror & Anr.

DATE OF ORDER :: 15-05-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Jai Prakash Gupta, for the appellant.

This special appeal is directed against the order dated 30.11.2006 by which the learned Single Judge declined to recall the previous order dated 10.8.2006 dismissing the writ petition for non-prosecution for not filing process fee etc. It appears from the order that the case was pending since March, 2005 for filing process fee etc. In that view of the matter, we find no error in the order dismissing the writ petition for non-prosecution. However, considering that if the Court does not interfere in the matter, it may result in ex parte adjudication in favour of the plaintiff. We are inclined to give a chance to the appellant but on payment of cost.

In the ordinary course, we should have issued notice of the appeal but it is stated that the writ petition was dismissed at the notice stage i.e. before service of notice. We accordingly took up the matter for final disposal.

After hearing counsel for the appellant, we set aside the order dated 10.8.2006 as well as the order dated 30.11.2006 and restore S.B. Civil Writ petition no.7093/2004 but subject to payment of cost of Rs.5,000/- payable to the plaintiff.

We are given to understand that in the writ petition an interim order had been passed to the effect that the suit may proceed but judgment shall not be delivered. By reason of restoration of the writ petition, the said order shall stand revived.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen